

House State Administration, January 15, 2007

Testimony of Dal Smilie, Chief Legal Counsel, Department of Administration in opposition to HB 169

HB 169 establishes a uniform public complaint process for state agencies. Each agency should have a complaint process that is easy for stakeholders to use.

HB 169 creates problems for agencies that have complaint processes that differ from the uniform process and are required by state or federal law, union contracts, and administrative rule.

Some examples of current complaint processes are:

State bid protest procedures are set out in 18-4-242, MCA. The time the complaint can be initiated and when a response is required differs from HB 169.

Construction and goods and services contractors have complaint processes set up in the pertinent contracts. HB 169 would set up another method of responding to complaints that is very different from how public agencies and their contractors deal with each other presently.

Tort claims against the state and political subdivisions have requirements that differ from HB 169 and are set out in 2-9-301, MCA et seq.

Public employee grievances are a form of complaint that are governed by substantial state and federal statute, agency rules and contracts. Title 39 deals with much of the employment relationship and is exempted but much of the state employment relationship is governed by 2-18-101, et seq. The format of the complaints and times set out to respond differ from HB 169.

DOJ has stated in the fiscal note that they would have to hire additional investigators to respond to complaints they receive in the format required by HB 169.

DPHHS processes over 8,000 complaints each year. Many of these are governed by the Code of Federal Regulations. The federal regulations complaint format and time frames for handling complaints differ from HB 169. DPHHS estimates it would have to hire FTE and create a computer program to track agency complaints in the manner HB 169 would require.

HB 169 does not apply to MAPA rules but does apply to other rules relating to intra governmental policy, public works and hunting and fishing regulations. (These are exempted from the term "rule" in 2-4-102, MCA).

Agencies should be responsive to complaints but not every complaint need come in on a specific form. Agencies receive many complaints now in letter, phone calls and emails and process those without sending the complainant a specific form to fill out to remake their complaint.

HB 169's complaint process does not apply to situations where a contested case hearing is required or available (2-4-102(4) and 601, MCA et seq). Contested case proceedings are available for many types of injury. Determining whether the HB 169 process or the contested case process is appropriate is likely to be very confusing.

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